BAKRI MOHAMAD ALI A

v.

PP

HIGH COURT MALAYA, IPOH B
BALIA YUSOF WAHI J
[CRIMINAL APPEAL NOS: 42A-3-05 & 42A-6-04]
31 MAY 2009

CRIMINAL LAW: *Anti-Corruption Act 1997 - Sections 10(a)(aa), 11(a) - Soliciting for gratification - Sexual favour - Uttering "saya nak you" to lady complainant - Whether words conveyed sexual connotation - Whether having sexual flavour - Whether prima facie case proved against appellant* C

D

The appellant, a senior engineer attached to the Lembaga Air Perak, was charged with two counts of corruption under ss. 10(a)(aa) and 11(a) of the Anti-Corruption Act 1997 ('the Act') respectively. Before the learned Sessions Court judge ('SCJ'), in respect of the charge under s. 10(a)(aa), namely of soliciting gratification in the form of sexual favours, evidence was adduced that the appellant had on several occasions uttered the words "saya nak you" to SP3 when the latter sought his help to complete a certain report required by SP3's company. The learned SCJ, however, took the view that the phrase "saya nak you" in the circumstances did not bear any sexual connotation, and so, at the end of the prosecution's case, acquitted and discharged the appellant without calling for his defence. The Public Prosecutor, being dissatisfied, had since appealed against this decision arguing that such finding by the SCJ was erroneous and unsustainable. Sexual favours apart, the appellant was also alleged to have solicited from SP3 a gratification of RM5,000, whereof the learned SCJ, having satisfied himself as to the receipt of such gratification, invoked the presumption under s. 42(1) of the Act (*ie*, that gratification was received corruptly), and consequently convicted and sentenced the appellant to two years' imprisonment and a fine of RM25,000 in default to one year imprisonment. The appellant appealed against this part of the decision, contending essentially that the invocation of the presumption was flawed, that since SP3 was a trap witness her evidence needed and ought to be corroborated, and that the SCJ, in any case, had failed to undertake a maximum evaluation of the prosecution evidence or consider or consider adequately his defence. E F G H I

Held (ordering for defence to be called on first charge; affirming conviction and sentence on second charge):

(1) Besides the evidence of SP3, there were other BPR officers such as SP9 and SP13 who were doing surveillance at the said Coffee House and both testified witnessing the receipt of the money and the cheque by the appellant. Further, upon his arrest, the marked notes and the cheque were recovered from the appellant. The previous conversation as regards the money, where the appellant had agreed to accept RM5,000, was also recorded in the recorded transcript of the telephone conversation between the appellant and SP3. With this background, there was nothing inherently wrong with the learned SCJ's finding that the presumption under s. 42(1) of the Act applied. (paras 13 & 14)

(2) There was no sufficient reason to fault the learned SCJ's consideration and evaluation of SP3's evidence in respect of the second charge. Consequently, the finding of guilt by the learned trial judge is affirmed. The court too is not disposed to disturb the sentence imposed. (paras 21 & 24)

(3) SP3 may be a trap witness but certainly not an accomplice. Hence, until cogent reasons for disbelief could be advanced in the light of evidence to the contrary and the surrounding circumstances, the evidence of SP3 is entitled to credence. There is no legal presumption that an interested witness should not be believed. (para 20)

(4) The learned SCJ had clearly misunderstood the meaning of the words "saya nak you". Those words can never mean anything else but as understood by SP3, and any reasonable man would have taken the words to be sexually flavoured. The learned SCJ had also failed to consider the evidence it its entirety, such as the tape recording evidence and the fact that he appellant did also suggest in the subsequent telephone conversation with SP3 that she book a room in the hotel. No doubt not a single word about sex was uttered. But the words, taken in the contexts of the whole case, means sexual favours and is a solicitation for sex. (para 26)

(5) The learned SCJ had misdirected himself in his consideration of the evidence of SP3 resulting in the acquittal and discharge of the appellant on the first charge of soliciting for sexual favours. The Public Prosecutor's appeal is thus allowed. The appellant is to be brought before the learned SCJ for his defence to be called on the said charge. (para 29)

Case(s) referred to:
Attan Abdul Ghani v. PP [1970] 2 MLJ 143 ***(refd)***
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Balasingham v. PP [1959] 25 MLJ 193 ***(refd)***
Bulkhari v. BR Mehra (AIR) [1973] SC 1788 ***(refd)***
Junaidi Abdullah v. PP [1993] 4 CLJ 201 SC ***(refd)***
Khoo Hi Chiang v. PP and Another Case [1994] 2 CLJ 151 SC ***(refd)***
Mohamed Mokhtar v. PP [1972] 1 MLJ 122 ***(refd)***
Mohd Ali Jaafar v. PP [1998] 4 CLJ Supp 208 HC ***(refd)***
Mohd Radhi Yaakob v. PP [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC ***(refd)***
Mohd Sallehuddin v. PP [2003] 1 LNS 687 ***(refd)***
Muniandy Subramaniam v. PP [2006] 6 AMR 223 ***(refd)***
PP v. A Thomas (AIR) [1959] Madras 166 ***(refd)***
R v. Maqsud Ali [1965] 2 All ER 464 ***(refd)***
Ramly Md Yasin & Ors v. PP [1982] CLJ 200; [1982] CLJ (Rep) 724 ***(refd)***
Sathasivam & Ors v. PP [1948] 1 LNS 61 ***(refd)***
Yusoff Kassim v. PP [1992] 3 CLJ 1535; [1992] 1 CLJ (Rep) 376 SC ***(refd)***

Legislation referred to:
Anti Corruption Act 1997, ss. 42(1), 47
Evidence Act 1950, s. 134

For the appellant - Dato' K Kumaraendran; M/s Kumar & Co
For the respondent - Kevin Morais DPP

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Balia Yusof Wahi J:

[1] The appellant was charged in the Sessions Court at Ipoh and the charges against him read:

[2] First charge:

> Bahawa kamu pada 28 Ogos 2001, jam lebih kurang 3.30 petang, di No.12, Tingkat Atas, Taman Bunga Matahari, Jalan Besar, Air Tawar, dalam daerah Manjung, dalam negeri Perak, telah secara rasuah meminta bagi diri kamu suatu suapan, iaitu habuan seks daripada Noor Hayati bt. Yusop, Pengarah Syarikat Tulin Meranti Sdn. Bhd. sebagai suatu dorongan untuk kamu lakukan suatu perbuatan berhubung hal ehwal prinsipal kamu, iaitu mempercepatkan laporan berkaitan permohonan syarikat Tulin Meranti Sdn. Bhd. untuk lanjutan masa berkaitan projek Lembaga Air Mentauliah Paip-Paip Polyethylene Bergaris Pusat 225 mm dan 355mm serta Kerja-Kerja yang berkaitan dari Taman Parit Jaya ke Jambatan Nordin, dari Loji Lama Parit ke Batu 3 dari Simpang Bota/Gelung Pepuyu ke Kg. Tersusun Gelung Pepuyu, dan dengan itu kamu telah melakukan suatu kesalahan di bawah seksyen 10(a)(aa) Akta Pencegahan Rasuah 1997 (Akta 575) dan boleh dihukum di bawah seksyen 16 Akta yang sama.

[3] Second charge:

> Bahawa kamu, pada 12 September 2001, jam lebih kurang 1.05 petang, di Tingkat 2, Polo Café, Hotel Heritage, dalam daerah Kinta, dalam negeri Perak, sebagai seorang agen Kerajaan Negeri Perak, iaitu Jurutera Kerja Kanan (Pembangunan), Lembaga Air Negeri Perak, telah secara rasuah menyetuju terima untuk diri kamu suatu suapan, iaitu wang tunai sebanyak RM1,000.00 dan sekeping cek Bumiputra Commerce No. 462504 bernilai RM4,000.00 daripada Noor Hayati bt. Yusop, Pengarah Syarikat Tulin Meranti Sdn. Bhd. sebagai suatu dorongan untuk kamu lakukan suatu perbuatan berhubung hal ehwal prinsipal kamu, iaitu mempercepatkan laporan berkaitan permohonan Syarikat Tulin Meranti Sdn. Bhd. untuk lanjutan masa berkaitan projek Lembaga Air Negeri Perak, iaitu Projek Memasang, Menguji dan Mentauliah Paip-Paip Polyethylene Bergaris Pusat 225mm dan 355mm serta Kerja-Kerja yang berkaitan dari Taman Parit Jaya ke Jambatan Nordin, dari Loji Lama Parit ke Batu 3 dari Simpang Bota/Gelung Pepuyu ke Kg. Tersusun Gelung, Pepuyu, dan dengan itu kamu telah melakukan suatu kesalahan di bawah seksyen 11(a) Akta Pencegahan Rasuah 1997 [Akta 575] dan boleh dihukum di bawah seksyen 16 Akta yang sama.

[4] The appellant was found guilty and convicted under the second charge and was sentenced to an imprisonment term of two years and a fine of RM25,000 in default one year imprisonment. He was acquitted and discharged without his defence being called under the first charge. In respect of his conviction under the

second charge, the appellant has filed the present appeal, while the Public Prosecutor has filed an appeal against the order of acquittal and discharge *via* Rayuan Jenayah No. 42A-6-04. Both appeals were heard together.

[5] The accused's appeal against conviction and sentence in Rayuan Jenayah No. 42A-3-05 is premised on the following grounds.

a) the trial judge did not undertake maximum evaluation of the prosecution evidence.

i) did not scrutinize or evaluate the credibility of SP4

ii) did not consider SP3 is a trap witness.

PW3 evidence – judge did not consider delay in making report.

b) Chain of custody of the tape recording has not been established.

c) trial judge did not make a finding at the conclusion of trial whether prosecution has proved case beyond reasonable doubt.

d) the judge did not consider or consider adequately the defence.

e) the trial judge admitted inadmissible and prejudicial evidence.

f) Misreception of evidence by the trial judge when considering the defence.

Facts

[6] A company by the name of Tulin Meranti Sdn. Bhd was given a contract by Lembaga Air Perak to upgrade water supply systems in Perak Tengah. The date of taking possession of the site of the project was 13 September 1999 and the date of completion of the work was 10 September 2000. After taking possession of the site, Tulin Meranti Sdn. Bhd was unable to complete the job on time and on 15 December 2000, Lembaga Air Perak issued a certificate of non completion to the company. Lembaga Air Perak gave a notice of intention to terminate the contract to Tulin Meranti Sdn. Bhd. Subsequent to the said notice, a representative from the company by the name of Noor Hayati (SP3) met Mohd

A Yusof (SP2) the General Manager of Lembaga Air Perak to discuss about the notice. SP2 advised SP3 to put in an appeal letter to Lembaga Air Perak. Tulin Meranti Sdn. Bhd then submitted its appeal letter dated 20 August 2001 to Lembaga Air Perak giving various reasons for the delay in completing the project
B and requested that the contract not to be terminated. It also requested for an extension of time to allow the company to complete the works.

[7] Upon receiving the appeal letter SP2 gave the letter to the
C appellant to study and attend to it and to advise SP2 later on. The appellant was a senior engineer in charge of development with Lembaga Air Perak and was involved in this project as a coordinator who has to make sure the project progresses smoothly until completion. In essence, the project was under the immediate
D supervision of the appellant. The appellant is an officer of a public body ie, Lembaga Air Perak by virtue of a certificate tendered and marked as P1 pursuant to s. 47 of the Anti Corruption Act 1997 (Act 575).

E **[8]** SP3 the complainant was a site supervisor of Tulin Meranti Sdn. Bhd which undertook the said project. After SP3 had submitted the letter of appeal to SP2, she was told by SP2 that the matter would be handed over to the appellant. Subsequent to that, the appellant called SP3 on 28 August 2001 to discuss
F about the appeal and told her that he wanted her. On 30 August 2001, SP3 contacted the Badan Pencegah Rasuah (BPR) and spoke to a BPR officer Encik Anuar SP9 about the request by the accused that he wanted her. SP3 was advised by SP9 to change the request to money. After that the appellant made another call
G to SP3 who managed to direct his request to one of money. On 5 September 2001, the appellant called again but this time he asked SP3 to meet him but when she avoided the issue, he asked for RM5,000 to be paid the next day. SP3 then told the appellant to postpone it to next week. SP3 immediately called SP9 who
H then told her to meet him at the BPR Office the following day.

[9] On 6 September 2001, SP3 went to meet SP9 and lodged a report marked as P10. SP3 was then refered to Encik Azam SP11 another BPR officer who then requested his officers to record the appellant's conversation with SP3. On 11 September
I 2001, SP3 called the accused and in the conversation the appellant reiterated that he wanted her and the money. SP3 then

asked the accused to meet her at the Heritage Hotel the next day. In the said teleconversation, the appellant also asked her to book a room there and he would pay for it.

[10] On 12 September 2001, SP3 was given RM1,000 marked notes in RM50 denomination by the BPR and a tape recorder to tape the conversation between her and the accused when they meet at Heritage Hotel. A trap was set up by the BPR with a team of its officers taking position at the Polo Café in the hotel. SP3 and a woman BPR officer Cik Hamidah SP12, arrived at the Heritage Hotel took their seats at the Polo Café and waited for the appellant. Shortly after, the appellant arrived and they all went for the buffet lunch there. At the table where they were seated, they started a conversation while eating but at an opportune time, the accused asked SP12 to leave them alone. When SP12 left the place, SP3 passed the marked RM1,000 and a cheque for RM4,000 to the appellant. The accused took the money and the cheque and told SP3 to wait at the coffee house while he went to settle the bill and pay for the hotel room. The appellant paid for the buffet lunch and as he was about to enter the hotel lift, he was arrested by the BPR officers.

[11] At the Polo Cafe, there were BPR officers such as SP9, Anuar and SP13, Mohamad Firdaus who witnessed the receiving of the money and cheque by the appellant from SP3. SP9 and SP13 were at the material time doing surveillance inside the coffee house. The money and cheque were later recovered from the appellant except for two pieces of RM50 notes which were later recovered from the cashier of the coffee house. A copy of the appeal letter by Tulin Meranti Sdn. Bhd. was also recovered from the appellant.

The Appeal

[12] The appellant is now contending that the learned sessions court judge (SCJ) has failed to evaluate and scrutinize the credibility of PW3 and PW4 and says, had he done so and subject the prosecution evidence to a maximum evaluation, in all probability he would have not called upon the appellant to enter his defence. The attack on PW3 evidence is premised on the issue that being a trap witness, the learned SCJ has failed to take that into consideration. Corroboration is lacking and instead the learned SCJ merely relied on s. 42 of the Anti Corruption Act. Section 42(1) of the Act reads:

Presumption in certain offences

42.(1) Where in any proceedings against any person for an offence under section 10,11, 13, 14 or 15 it is proved that any gratification has been accepted or agreed to be accepted, obtained of attempted to be obtained, solicited, given or agreed to be given, promised or offered, by or to the accused, the gratification shall be presumed to have been corruptly accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.

[13] In his grounds of judgment, the learned SCJ has found that the appellant has received the money and the cheque from SP3 in the coffee house at the Heritage Hotel. Besides the evidence of SP3, there were other BPR officers such as SP9 and SP13 who were doing surveillance at the Coffee House and both testified witnessing the receipt of the money and the cheque by the appellant. Further, upon his arrest, the marked notes and the cheque were recovered from the appellant's possession. The previous conversation as regards the money was recorded in the recorded transcript of the telephone conversation between the accused and PW3 where the accused has agreed to accept RM5,000.

[14] With that background, I do not find anything inherently wrong with the learned SCJ finding that the presumption under the said section applies. Upon proof of acceptance, the law merely presume that it has been corruptly accepted and nothing more than that. It is up to the appellant to prove the contrary. This presumption is a presumption of law. The prosecution has to prove nothing more than the acceptance of the money. (See: *Attan b. Abdul Ghani v. PP* [1970] 2 MLJ 143.

[15] In deciding to call upon the appellant to enter his defence, the learned SCJ must have satisfied himself that a *prima facie* case has been established. The Supreme Court in *Junaidi Abdullah v. PP* [1993] 4 CLJ 201 at p. 206 stated:

By calling an accused to enter his defence, it should be assumed that the trial judge must on evaluation of the evidence, have been satisfied that the prosecution had, at that stage of the trial, established a *prima facie* case which, if unrebutted, would warrant a conviction of the accused. To arrive at such a conclusion, it is

inherent that the judge must consider all the evidence adduced by the prosecution as tested in cross-examination, on a *prima facie* basis.

[16] On the complaint of the failure of the learned SCJ to evaluate and scrutinize the credibility of SP3 and SP4, suffice it to say that there is no statutory provision requiring the trial judge to expressly record his reason before calling the accused to enter his defence or to state his findings on the credibility of the main prosecution witness. (See: *Khoo Hi Chiang v. PP and Another Case* [1994] 2 CLJ 151, *Muniandy a/l Subramaniam v. Pendakwa Raya* [2006] 6 AMR 223). Be that as it may, the very fact that the learned SCJ came to different conclusions in respect of the two charges against the appellant is, I think a cogent proof to show that the learned SCJ has done maximum evaluation of the evidence of the prosecution witness. In finding there was no corroboration of SP3 evidence and this acquitting and discharging the appellant on the first charge and in accepting the same witness' evidence for purposes of the second charge, clearly involves the process of scutinisation and evaluation of the witness' evidence.

[17] On the delay of SP3 in making the report, I do not think, after taking into consideration the whole circumstances of the case be of any significance to the prosecution case. The appellant first spoke to PW3 on 28 September 2001 about the company's appeal and telling SP3 he wanted her. On 30 August 2001, SP3 contacted the BPR office wherein she was told to change the request to money. On 5 September 2001 the appellant called again SP5 wanting to see her the next day SP3 however postponed it to the following week and went to lodge a report at the BPR office on 6 September 2001. On the contrary from the sequence of events that took place leading to the lodging of the report, I would say that it was made immediately after the appellant had asked for RM5,000 to be paid the next day, ie, on 6 September 2001. When the appellant first spoke to SP3 telling her he wanted her, SP3 went to the BPR office on 30 August 2001 after receiving the telephone call on 28 August 2001. That is also very quite soon after the call was made. In any event, the report, tendered as exh. P10 does not form a very material or important part of the prosecution evidence and in terms of evidential value it may be accepted as a piece of corroborative evidence. On the suggestion that the delay in making reports may give rise to the

danger of fabrication or as an afterthought, on the evidence available before that court, I am satisfied that such a possibility can easily be ruled out in this case.

[18] Still on the evidence of SP3, the star witness in the case, it is submitted by the appellant's counsel that being a trap witness her evidence requires corroboration. While it is conceded that not a word about corroboration was mentioned in the grounds of judgment of the learned trial judge in respect of the second change, corroboration seems to take centre stage in his findings on the first charge. In this respect, I am reminded of the wise words of Sharma J in the case of *Mohamed Mokhtar v. Public Presentor* [1972] 1 MLJ 122 on the approach to be taken by an appellate court in dealing with complaints of failure of trial judges giving reasons for their findings at p. 123 of the report, his Lordship stated:

> It is undoubtedly desirable that the learned magistrates and the learned presidents should when writing their ground of decision give their findings and the reasons for those findings. It has been suggested that it is mandatory on the part of the learned magistrates and the learned presidents to give their reasons. I have in one of the appeals held it to be so but it is not mandatory in the sense that failure to give such reasons would render the conviction or turn the trial itself into a nullity. Sometimes the amount of work the magistrates have to cope with at a particular time may make it virtually impossible for them to write a well dressed judgment, flawless as it were, for the benefit of the appellant's counsel. …
>
> When an appellate court is convinced, as I am in this case, that the conviction of the appellant was good and there is nothing to cast any shadow of doubt in the finding of guilt arrived at by the learned magistrate or the president, the court itself can deal with the matter as fully and as effectively even though the grounds of decision as appearing in the appeal record are found lacking in specific findings and the reasons for those findings. I cannot now ask the learned president to write fresh grounds of decision to meet with the criticism levelled by the learned counsel for the appellant.

[19] Taking the approach as stated by the learned judge in the above quoted case, I can safely say in this case, after carefully going through and scrutinised the appeal record, and all the evidence, both the prosecution and the defence, a couple of times

in order to ensure that no injustice is done to the appellant, that I can find no reason to interfere with the finding of guilt arrived at the learned SCJ in respect of the second charge. The issue of corroboration has sufficiently been dealt with not only for the first charge but also for the second charge.

[20] It is trite that corroboration is desirable in respect of accomplice evidence or trap witness (*Mohd Sallehuddin v. PP* [2003] 1 LNS 687) In my view SP3 may be a trap witness but certainly not an accomplice (*Sathasivam & 2 Ors v. PP* [1948] 1 LNS 61). Until cogent reasons for disbelief can be advanced in the light of evidence to the contrary and the surrounding circumstances, the evidence of SP3 whether she is a trap witness or an interested witness is entitled to credence. There is no legal presumption that an interested witness should no believed (*Balasingham v. PP* [1959] 25 MLJ 193) In *PP v. A.Thomas* (AIR) [1959] Madras 166, Ramaswani J, speaking of trap witnesses has the following to say:

> A trap witness is not an accomplice and he does not come under the category of persons whose evidence cannot be accepted in the absence of material corroboration. But at the same time as the system of employing trap witness will lend itself to abuses, court will closely scrutinize his testimony. The weight to be attached to his evidence will depend upon the character of each individual trap witness. Prudence at the same time requires that the courts should demand and the prosecution should adduce some corroborative evidence. That evidence adduced to corroborative this tap witness need not be strong, absolutely convincing or sufficient in itself to support a verdict of guilty, nor even equivalent to the swearing of one credible witness; any corroborative evidence – documentary or oral, direct or circumstantial – legitimately tending to connect the accused with the commission of the offence may be sufficient to warrant a conviction although standing by itself it would be only slight proof of accused's guilt and entitled to but little consideration and even though it is not wholly inconsistent with the innocence of the accused. On the other hand, evidence which merely raises a suspicion that accused is the guilty party is not sufficiently corroborative of the testimony of a trap witness to warrant a conviction nor will uncertain or equivocal corroboration suffice. No general rule can be stated with respect to the quantum of evidence corroborating a trap-witness's testimony. Each case must be governed by its own circumstances keeping in view the nature of the crime, the character of the trap-witness's testimony and the general requirements necessary to sustain a conviction.

[21] I have given every consideration and have scrutinized the appeal record in its entirety, and I find no sufficient reason to fault the learned trial judge's consideration and evaluation of the evidence of SP3 in respect of the second charge. There is ample evidence of corroboration of her evidence as regards the receipt of the cheque and the money. It has been held that the discovery of the trap money from the accused person is sufficient corroboration. (See: *Ramly Md. Yasin & Others v. Public Prosecutor* [1982] CLJ 200; [1982] CLJ (Rep) 724). As such I find no sufficient reason to interfere with the finding of guilt arrived at by the learned SCJ.

[22] On the tape recording evidence, the issue raised by the appellant is one of whether there is a break in the chain of evidence because of the appearance of a mysterious person by the name of Cik Rosnah. SP18, the investigation officer in this case received the tape from SP15 who did the recording. SP18 then handed over the tape to Cik Rosnah for transcription. SP17 Roslina, however said she received the tape from SP18 and after finishing her work of transcribing the tape she handed over the tape and the transcription back to SP18. Her is the missing link. Who is Cik Rosnah whom PW18 said was given the tape for transcription? Be that as it may in so far as the evidence goes, I am satisfied that there is no doubt whatsoever that the tape recording that was produced and played in court before the learned trial judge was the same tape recorded by SP15 and transcribed by SP17. Both of them gave evidence in court. Furthermore, voice identification was done by SP3. The non calling or identification of Cik Rosnah is not fatal to the prosecution case.

[23] Perusing the grounds of judgment of the learned SCJ, it is crystal clear that he had not given any emphasis on the tape recording evidence in finding the appellant guilty on the second charge because there are other overwhelming evidence produced by the prosecution. The tape recording evidence is not pivotal to the precaution's case. However, he did rely on the tape recording evidence in coming to his finding that the words "saya nak you" does not have sexual connotation and does not have the effect of soliciting for sexual favours. Having scrutinised the evidence of the tape recording in its totality, from the making of it to the transcribing and its final production and identification in court, I

am of the considered view that the procedure and the test as laid down in the case of *Mohd Ali Jaafar v. Public Prosecutor* [1998] 4 CLJ Supp 208 on the admissibility of tape recording evidence. (See also 23 *Bulkhari v. BR Mehra* (AIR) [1973] SC, 1788, *R v. Maqsud Ali* [1965] 2 All ER 464). In the circumstances, I hold the appellant's objection on the admissibility of the tape recording evidence to be baseless and has no merits.

[24] The duty of an accused person, once defence is called is only to cast a reasonable doubt. The court may not be convinced of the truth of the defence story or version. Even if the court does not accept or believe the defence explanation, the court must consider whether it raises a reasonable doubt as to his guilt (*Mohd Radhi Yaakob v. Public Prosecutor* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311). The onus on the appellant to rebut the presumption under s. 42(1) of the Anti Corruption Act 1997 is on the balance of probabilities and the learned SCJ has found that the appellant has not discharged his burden. The learned SCJ has considered the defence put forward by the appellant and found the appellant's story that the money he received from SP3 was an innocent money being a repayment of a loan owed to SD4 was an afterthought. Having sanitised the grounds of judgment on his reasons for coming to that conclusion, I do not think it was unsubstantiated. I am satisfied the learned SCJ has considered the defence evidence not only from the appellant himself but that of all the other defence witness totaling six in number. The learned SCJ is entitled to make that finding and I see no justification for any interference. The finding of guilt by the learned trial judge is hereby affirmed and at the same time I do not feel disposed to disturb the sentence imposed. The appeal is hereby dismissed.

The Public Prosecutor's Appeal

[25] This appeal is against the order of acquitted and discharge of the appellant witout his defence being called on the first charge of soliciting for sexual favours. The crux of the appeal is on the ground of the learned trial judge's narrow and erroneous view of the meaning of the words "saya nak you". In his grounds of judgment, the learned SCJ stated:

A … SP3 also agreed that it was her understanding that the words "saya nak you" meant sexual favors.

… Hence, by just basing on the words of SP3 and her own narrow view of the words "saya nak you" without any corroboration of any kind, it is my considered view that the
B prosecution had not proven its case against the accused on the first charge.

[26] In my view the learned SCJ has clearly misunderstood the meaning of the words "saya nak you". Those words can never
C mean anything else but as understood by the witness SP3. Any reasonable man would have taken those words to be sexually flavoured. Furthermore the learned SCJ has also failed to consider the evidence on its entirety, not only from the evidence of SP3 but also the tape recording evidence and the evidence of SP4
D which under the circumstances would be sufficient corroboration of SP3 evidence. Lest the learned SCJ has forgotten, the appellant did also in the subsequent telephone conversation with SP3 suggest her to book a room and when asked by SP3 what he meant by "nak you", the appellant replied "entertain sikit-sikit
E dan tidur dengan dia."(p. 19 appeal record). No doubt not a single word about sex was uffered, … but those words taken in the context of the whole case, means sexual favours and is a solicitation for sex. You need not be a student of Malay literature to understand the meaning of these words. It is always typical of
F a Malay to speak in that manner, avoiding using crude words or phrases but preferring to use indirect and subtle meaning words. But the words 'saya nak you' are under the circumstances of the case, not really that subtle after all. SP3 understood it well and understood it perfectly. That is why she had no qualm about
G reporting the matter to the BPR and telling the BPR what she thought about those words which she repeated in her evidence in court.

[27] On the issue of corroboration, the tape exh. P11 was played
H in court and SP3 identified her conversation with the appellant on 11 September 2001. On that conversation, SP3 stated:

mulanya perbualan kami berkisar tentang permohonan saya. Kemudiannya dia mengulangi permintaannya tentang nak saya dan duit itu.

I … Dia ada tanya saya dimana dan saya jawab di Heritage Hotel. Dia suruh saya book bilik dan bayaran akan dibayar oleh dia besok.

[28] The evidence of SP4 indicates that on 28 August 2001 he was requested by SP3 to hear her telephone conversation with the appellant and he was also told by SP3 that the appellant did request for money and sexual favours before he could complete the report for extension of time of the company's contract. Taken in its entirety the evidence adduced by the prosecution through SP4, the tape recording and the BPR report should have been considered sufficient corroboration which the learned SCJ was looking for. He has failed to consider those evidence. Failure to consider or improper consideration of evidence by a trial judge affords ground for intervention by an appellate court. An appellate court is entitled for act upon its own view of the evidence where the trial judge has failed to take account of material circumstances (*Yusoff Kassim v. Public Prosecutor* [1992] 3 CLJ 1535; [1992] 1 CLJ (Rep) 376). As I have started earlier in this judgment as to the status of SP3 being a trap witness, it is not a mandatory requirement of law that the evidence must be corroborated. Corroboration can come in different form, documentary or oral, direct or circumstantial. Courts can act on the testimony of a single witness if the said witness is credible and very much depends on the facts and circumstances of the case. Where the evidence of a witness does not require to be corroborated in law, there is no obligation to tender corroborative evidence to support his testimony. Section 134 of the Evidence Act provides that no particular number of witness shall in any case be required for the proof of any fact. The Latin maxim testes ponderantor non numerantor (witness are weighed, not numbered or counted) applies. (See: *Balachandran v. PP* [2005] 1 CLJ 85). There is no reason only the evidence of SP3 could not be accepted on its own.

[29] In the circumstances, I hold that the learned SCJ has misdirected himself in his consideration of the evidence of SP3 resulting in the acquittal and discharge of the appellant on the first charge of soliciting for sexual favors. Accordingly, I hereby allow the appeal by the Public Prosecutor and order that the appellant be brought before the learned SCJ for his defence to be called on the said charge.